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HAWAII
LABOR RELATIONS BOARD

Attorneys for Director, Department
of Labor and Industrial Relations

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSAB 2002-29
)	(OSHCO No. D8437)
DIRECTOR, DEPARTMENT OF LABOR)	(Inspection No. 305298739)
AND INDUSTRIAL RELATIONS,)	
)	STIPULATION AND SETTLEMENT
Complainant,)	AGREEMENT; EXHIBIT "A";
)	APPROVAL AND ORDER
vs.)	
)	
MACY'S WEST, INC.,)	
)	
Respondent.)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director"), and Respondent Macy's West, Inc. ("Respondent"), having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawai'i Labor Relations Board ("Board") stipulate and agree as follows:

On or about May 6 and 7, 2002, the Director, by and through the State of Hawaii's Occupational Safety and Health

Division ("HIOSH"), inspected Respondent's workplace located at 1450 Ala Moana Blvd., Honolulu, Hawai'i 96814.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty ("Citation") to Respondent on June 3, 2002, alleging violations of the Hawai'i Occupational Safety and Health Standards and assessed an aggregate penalty of \$7,650.00. See Exhibit "A".

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawai'i Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 1450 Ala Moana Blvd., Honolulu, Hawai'i 96814.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawai'i Occupational Safety and Health Law.

4. Respondent agrees that it has or will abate each violation listed in the Citation issued on June 3, 2002 in

compliance with the abatement requirements under Hawai'i Administrative Rule ("HAR") § 12-51-22.

5. The Citation issued on June 3, 2002, regarding violation of standards 29 CFR 1910.219(e)(1)(i) [Refer to Chapter 12-80.1, HAR], 29 CFR 1910.303(b)(2) [Refer to Chapter 12-89.1, HAR], 29 CFR 1910.304(f)(4) [Refer to Chapter 12-89.1, HAR], 29 CFR 1910.305(a)(1)(i) [Refer to Chapter 12-89.1, HAR], 29 CFR 1910.305(b)(2) [Refer to Chapter 12-89.1, HAR], 29 CFR 1910.334(a)(2)(i) [Refer to Chapter 12-89.1, HAR], and their corresponding characterizations, is affirmed. See Exhibit "A".

6. The Director reduces the aggregate penalty from \$7,650.00 to \$3,900.00, which Respondent shall pay in full to the Director of Budget and Finance upon execution of this Agreement.

7. Except for the stipulated amendment described above, the Citation issued on June 3, 2002 is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawai'i Occupational Safety and Health Law, and

the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawai'i Occupational Safety and Health Law, or the related rules.

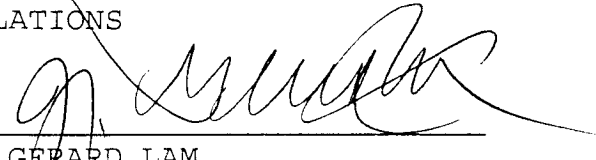
DATED: Honolulu, Hawai'i, August 8, 2002.

MACY'S WEST, INC.

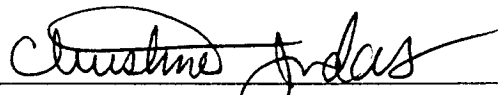
By: 

Its Chief Financial officer

DIRECTOR, DEPARTMENT OF
LABOR AND INDUSTRIAL
RELATIONS


J. GERARD LAM
Deputy Attorney General

APPROVED AS TO FORM:

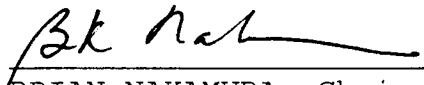

CHRISTINE L. JUDAS, ESQ.
Attorney for Respondent

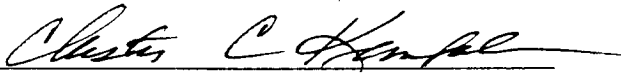
Attorney for Director,
Department of Labor and
Industrial Relations, State
of Hawai'i

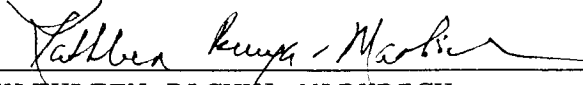
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS
BOARD:

ORDER NO. 5

DATED: August 14, 2002


BRIAN NAKAMURA, Chairman


CHESTER KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH,
Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7000 1670 0006 4272 9306

Citation and Notification of Penalty

To:
Macy's
and its successors
1585 Kapiolani Blvd 13th Floor
Honolulu, HI 96814

Inspection Number: 305298739
Inspection Date(s): 05/06/2002- 05/07/2002
Issuance Date: 06/03/2002
OSHCO ID: D8437
Optional Report No.: 02702

Inspection Site:
1450 Ala Moana Blvd
Honolulu, HI 96814

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Department of Labor and Industrial Relations Appeals Board or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

EXHIBIT A

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 20 calendar days after receipt, the proposed citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the Appeals Board.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been

discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

FOR JENNIFER SHISHIDO, ADMINISTRATOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
830 PUNCHBOWL STREET
HONOLULU, HI 96813

Macy's
1585 Kapiolani Blvd 13th Floor
Honolulu, HI 96814

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 06/03/2002. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305298739

Inspection Dates: 05/06/2002 - 05/07/2002

Issuance Date: 06/03/2002



830 Punchbowl Street, Room 423
Honolulu, HI 96813

Citation and Notification of Penalty

Company Name: Macy's

Inspection Site: 1450 Ala Moana Blvd, Honolulu, HI 96814

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.219(e)(1)(i) [Refer to Chapter 12-80.1, HAR] Horizontal belts which had both runs seven feet or less from the floor did not have the belt fully enclosed in accordance with paragraphs (m) and (o) of this section; i.e., Kargard Company air compressor, model number 157911, had no guard enclosing its horizontal belt and wheel assembly.

Location: Maintenance shop in chiller room

Date By Which Violation Must be Abated:

06/10/2002

Proposed Penalty:

\$ 2,250.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305298739

Inspection Dates: 05/06/2002 - 05/07/2002

Issuance Date: 06/03/2002



830 Punchbowl Street, Room 423
Honolulu, HI 96813

Citation and Notification of Penalty

Company Name: Macy's

Inspection Site: 1450 Ala Moana Blvd, Honolulu, HI 96814

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1910.303(b)(2) [Refer to Chapter 12-89.1, HAR] Listed or labeled electrical equipment was not used or installed in accordance with the instructions included in the listing and labeling; i.e., (1) Six instances of single electrical outlets used for portable light fixtures were pulled out from its display counter molding thus allowing conductors and connection points to be exposed and (2) one instance of metal, duplex outlet box with attached flexible cord was not installed according to the manufacturer's listing and labeling.

Location: (1) Estee Lauder cosmetics counter
(2) Clinique cosmetic counter

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected
\$ 1,800.00

Citation 1 Item 2b Type of Violation: **Serious**

29 CFR 1910.304(f)(4) [Refer to Chapter 12-89.1, HAR] The path to ground from circuits, equipment, and enclosures were not permanent and continuous: i.e., grounding wire separated from its terminal screw of an electrical outlet that was pulled out from its mounting.

Location: Estee Lauder cosmetic counter

Date By Which Violation Must be Abated:

Corrected

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305298739

Inspection Dates: 05/06/2002 - 05/07/2002

Issuance Date: 06/03/2002



830 Punchbowl Street, Room 423
Honolulu, HI 96813

Citation and Notification of Penalty

Company Name: Macy's

Inspection Site: 1450 Ala Moana Blvd, Honolulu, HI 96814

The alleged violations below (3a & 3b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 3a Type of Violation: **Serious**

29 CFR 1910.305(a)(1)(i) [Refer to Chapter 12-89.1, HAR] Metal raceways and cable armor, and other metal enclosures for conductors were not connected to all boxes, fittings, and cabinets; i.e., an electrical conduit had three separated sections that allowed the conductors to be exposed.

Location: Housewares Stockroom

Date By Which Violation Must be Abated:

Proposed Penalty:

Corrected

\$ 1,800.00

Citation 1 Item 3b Type of Violation: **Serious**

29 CFR 1910.305(b)(2) [Refer to Chapter 12-89.1, HAR] All pull boxes, junction boxes, and fittings were not provided with covers approved for the purpose and each outlet box did not have a cover, faceplate, or fixture canopy; i.e., (1) two electrical junction boxes had no covers thus allowing conductors to be exposed and (2) wall-mounted, duplex outlet had no faceplate.

Location: (1) Housewares Stockroom
(2) Work station within Hackfeld's Restaurant

Date By Which Violation Must be Abated:

06/10/2002

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305298739

Inspection Dates: 05/06/2002 - 05/07/2002

Issuance Date: 06/03/2002



830 Punchbowl Street, Room 423
Honolulu, HI 96813

Citation and Notification of Penalty

Company Name: Macy's

Inspection Site: 1450 Ala Moana Blvd, Honolulu, HI 96814

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.334(a)(2)(i) [Refer to Chapter 12-89.1, HAR] Portable cord- and plug-connected electrical equipment and flexible cord sets (extension cords) were not visually inspected before use on any shift for external defects (such as loose parts, deformed or missing pins or damage to outer jacket or insulation) and for evidence of possible internal damage; i.e., "Univex" meat slicer, model number 6509, serial number 65091920036, was missing its ground pin.

Location: Kitchen of Hackfeld's Restaurant

Date By Which Violation Must be Abated:

06/10/2002

Proposed Penalty:

\$ 1,800.00



FOR JENNIFER SHISHIDO
Administrator

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

SUMMARY OF PROPOSED PENALTIES

Company Name: Macy's
Inspection Site: 1450 Ala Moana Blvd, Honolulu, HI 96814
Issuance Date: 06/03/2002

Summary of Penalties for Inspection Number 305298739

Citation 1, Serious = \$ 7,650.00
TOTAL PROPOSED PENALTIES = \$ 7,650.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$7.50 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Received by (Please Print Clearly) <i>B. Date of Delivery</i> <i>6/4/02</i></p> <p>C. Signature <i>X Ronny Sell</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
1. Article Addressed to: 305298739 Mr. Ernie Sagucio Facility Manager Macy's 1585 Kapiolani Blvd., 13th Floor Honolulu, HI 96814		3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Copy from service label) 7000 1670 0006 4272 9306		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	